IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IVAN LOPEZ-DIAZ	:	CIVIL ACTION
	:	NO. 01-CV-5181
v.	:	
COUNTY OF LANCASTER, et al.	:	

O'Neill, J. March , 2003

MEMORANDUM

I. INTRODUCTION

Plaintiff Ivan Lopez-Diaz, a prisoner formerly housed in the Restricted Housing Unit ("RHU") at Lancaster County Prison, has assert two counts against Warden Vincent Guarini, Major Edward Klinovski, Officer William Cane, and Lancaster County for allegedly violating his Eighth Amendment right to be free from cruel and unusual punishment. Before me is defendants' motion to dismiss Counts I and II of the amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. For the reasons stated below, I will grant the motion as to Count I.[1] I will grant the motion in-part and deny the motion in-part as to Count II.

II. BACKGROUND

From May 2001 until December 2001, plaintiff was a resident of the RHU, where the

[1] Plaintiff's amended complaint asserts two additional counts (Counts III-IV), directed against unidentified medical personnel: Nurse Doe, Doctor Doe and Medical Provider. Count III alleges an Eighth Amendment violation for inadequate medical treatment and Count IV asserts a state claim of medical malpractice. Neither of these counts are at issue in the present motion.

residents are to be completely segregated from one another because they are perceived to be high-risk, dangerous inmates. In accordance with RHU policy, plaintiff was "locked down" in his cell twenty-three hours per day. During the one hour in which plaintiff was allowed out of his cell he was permitted to exercise, make telephone calls, and shower in the "day room," a recreational area in the prison. Plaintiff alleges that although prison policy required RHU inmates to be handcuffed while in transit from the their cells to the day room they were to be freed upon arrival at the day room. The complaint, however, asserts that because the prison began placing multiple RHU residents in the day room simultaneously, all occupants had to remain handcuffed.[2]

Plaintiff asserts that the day room's shower was the only one to which he had access and that it lacked a gate or cage that would allow inmates the opportunity to have their hands free to shower while other RHU residents were present in the day room.[3] Plaintiff complains that because he had to shower while handcuffed he was unable to reach his wrists, back, thighs and buttocks to wash and a swollen and inflamed rash developed in those areas from inadequate hygiene, causing pain, itching, rawness, and flaking. Plaintiff contends that these symptoms occasionally recur, even after his release from Lancaster County Prison.

After the rash developed, plaintiff allegedly submitted five or six official requests over a two-and-a-half-week period for nursing assistance, wrote numerous letters to Warden Guarini requesting medical treatment, and made frequent oral requests that the guards, including

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[2] Specifically, plaintiff contends that the day room was designed to hold only one inmate at a time. The complaint, however, discloses that the day room contains two telephones for inmates to use.

[3] Plaintiff alleges that defendants were aware of alternative methods of securing RHU inmates, such as erecting a gate or cage around the shower, which would have allowed plaintiff to clean himself uncuffed.

defendant Cane, permit him to visit the infirmary. Eventually, a nurse examined plaintiff. The nurse allegedly conducted the entire examination from a distance of approximately ten feet, standing outside of plaintiff's cell. The nurse did not provide any medication to treat the rash or its symptoms and recommended that plaintiff run water over the rash. This treatment did not alleviate the problem. Although the rash worsened, plaintiff was not examined again.

III. STANDARD FOR RULE 12(b)(6)

A Rule 12(b)(6) motion to dismiss examines the sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45 (1957). "The pleader is required to 'set forth sufficient information to outline the elements of his claim or to permit inferences to be drawn that these elements exist.'" Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993), quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 340 (2d ed. 1990). In determining the sufficiency of the complaint I must accept all the plaintiff's allegations as true and draw all reasonable inferences therefrom. Graves v. Lowery, 117 F.3d 723, 726 (3d Cir. 1997).

> The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.

Id., quoting Conley, 355 U.S. at 47. "Thus, a court should not grant a motion to dismiss 'unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Graves, 117 F.3d at 726, quoting, Conley, 355 U.S. at 45-46.

IV. DISCUSSION

Count I alleges that defendants violated the Eighth Amendment by requiring plaintiff to wear handcuffs in the shower, which prevented him from adequately cleaning himself and

subsequently caused a severe rash on his wrists, back, thighs, and buttocks. Count II asserts that defendants violated the Eighth Amendment by subsequently denying him adequate medical treatment for the rash.

A. Deprivation of adequate hygiene

I will grant defendants' motion to dismiss as to Count I. Although consistently denying a prisoner proper hygiene for an extended period of time so that his affected body parts erupt in a painful rash constitutes cruel and unusual punishment under the Eighth Amendment, plaintiff has not sufficiently alleged deliberate indifference. "The Eighth Amendment, which applies to the States through the Due Process Clause of the Fourteenth Amendment . . . prohibits the infliction of 'cruel and unusual punishments' on those convicted of crimes." Wilson v. Seiter, 501 U.S. 294, 296-97 (1991) (citation omitted). Prison conditions constitute cruel and unusual punishment if they cause unquestioned and serious deprivations of basic human needs that deprive inmates of the minimal civilized measure of life's necessities. Tillman v. Lebanon County Correctional Facility, 221 F.3d 410, 417-18 (3d Cir. 2000). The government assumes responsibility for satisfying basic human needs such as food, clothing, shelter, medical care, and reasonable safety when it takes a person into custody against his or her will. Id. "To demonstrate a deprivation of his basic human needs, a plaintiff must show a sufficiently serious objective deprivation, and that a prison official subjectively acted with a sufficiently culpable state of mind, i.e., deliberate indifference." Id.

The alleged denial of adequate hygiene over an extended period of time resulting in a severe and persistent rash sufficiently states an objective serious deprivation for the purposes of the Eighth Amendment. See Bradley v. Puckett, 157 F.3d 1022, 1026 (5th Cir. 1998) (holding

that denial of disabled prisoner proper facilities to shower for over two months stated claim for cruel and unusual punishment); Clayton v. Morris, No. 90 C 2718, 1994 WL 118186, *6 (N.D. Ill. Mar. 28, 1994) ("The denial of shower privileges over a prolonged period may be actionable if the inmate can allege a specific physical harm that results."); Martin v. Lane, 766 F. Supp. 641, 648 (N.D. Ill.1991) (same); see also Carver v. Bunch, 946 F.2d 451, 452 (6th Cir. 1991) ("The Eighth Amendment prohibits deliberate indifference to needs of prisoners, including the basic elements of hygiene."); Howard v. Adkison, 887 F.2d 134, 137 (8th Cir. 1989) ("[I]nmates are entitled to reasonably adequate sanitation, personal hygiene, and laundry privileges, particularly over a lengthy course of time."); McCoy v. Chesney, No. CIV. A. 95-2552, 1996 WL 119990, *5 (E.D. Pa. March 15, 1996) (Reed, J.) (holding that denial of personal hygiene items for three months constituted objectively serious deprivation).

The present case is similar to Martin v. Lane, 766 F. Supp. 641 (N.D. Ill.1991). There, a district court determined that denial of showers to a prisoner during an eighteen-day lockdown period resulting in a body rash constituted an objectively serious deprivation. Id. at 648. The court recognized that although a short-term deprivation of necessities does not usually give rise to an Eighth Amendment claim, when an inmate alleges specific resulting physical harm his claim is actionable. Id.

In the present situation, plaintiff alleges both an extended period of time during which he could not bathe adequately and resulting harm. Plaintiff asserts that he was forced to take all of his showers handcuffed while housed in RHU, which lasted approximately seven months.[4] As a

[4] A factual issue that neither party addresses is whether plaintiff had access to a sink and personal hygiene items while uncuffed in his cell in the RHU. Such a situation would have provided plaintiff the opportunity to adequately bathe body parts that he could not reach in the

result, plaintiff claims that he developed a severe rash on his wrists, back, thighs, and buttocks.

Defendants contend that handcuffs were necessary while plaintiff was showering because he posed a danger to staff and fellow inmates.[5] In addition, defendants cite to a number of cases recognizing that requiring an inmate to shower while handcuffed or in leg irons does not violate the Eighth Amendment. Branham v. Meachum, 77 F.3d 626, 631 (2d Cir. 1996) (forcing inmate to wear leg irons while showering did not violate Eighth Amendment); LeMaire v. Maass, 12 F.3d 1444, 1457 (9th Cir. 1993) (noting that requiring inmate who assaulted prison guards to shower wearing handcuffs and shackles does not state a claim under the Eighth Amendment); see also Sanders v. Hopkins, 131 F.3d 152, 1997 WL 755276, *2 (10th Cir. Dec. 5, 1997) (unpublished opinion) (concluding that pre-trial detainee who sustained head injury after falling while shackled during shower did not state claim under Fourteenth Amendment).

Defendants' arguments, however, are misplaced. In the present case, plaintiff does not complain only of the presence handcuffs during shower or contest defendants' right to maintain adequate security. Instead, Count I attacks defendants failure to provide adequate hygiene for

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shower. See Nelson v. Harris, 74 F.3d 1246, 1996 WL 4370, **4 (9th Cir. Jan. 4, 1996) (unpublished opinion) ("The denial of a shower for four days, where a sink is provided in a prisoner's cell, does not rise to the level of an Eighth Amendment violation.").

[5] Defendants have attached an affidavit from defendant Klinovski alleging a number of assaults and disturbances plaintiff committed in prison from July 21, 1999 until September 22, 2001, which required that he be placed in the RHU. I have not considered this submission because under Rule 12(b)(6), am prevented from considering matters outside the pleadings unless I convert to motion to motion for summary judgement. See Fed. R. Civ. P. 12(b)(6); see also 5A Charles Alan Wright& Arthur R. Miller, Federal Practice and Procedure § 1366 (2d ed. 1990) ("The court has complete discretion to determine whether or not to accept any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion."). However, I recognize that plaintiff was "perceived to be a high-risk, dangerous inmate" because he admits as much in his complaint.

plaintiff. None of the prisoners in the cases that defendants cite experienced any harm resulting from a lack of hygiene. Moreover, plaintiff alleges that defendants were aware of alternative methods of securing RHU inmates, such as erecting a gate or cage around the shower, which would have allowed plaintiff to clean himself uncuffed.

As to the subjective element of his inadequate hygiene claim, plaintiff has failed to allege deliberate indifference by the defendants. "[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994).

In the present case, plaintiff does not allege that he made prison officials specifically aware that he was receiving inadequate hygiene because of the handcuffs. In his amended complaint, plaintiff asserts: "[I] put in five or six official requests over a two-and-a-half-week period for nursing assistance. [I] additionally wrote to Warden Guarini to request medical treatment and made oral requests that the guards, including Officer Cane, allow [me] to visit the infirmary." Although these requests would put defendants on notice of plaintiff's need for medical care, such communications do not suggest that plaintiff's rash was caused by inadequate hygiene due to being handcuffed while in the shower.

Moreover, plaintiff's allegations that Warden Guarini and the prison staff knew that they "could get in trouble" for making prisoners shower while handcuffed does not constitute deliberate indifference to plaintiff's claim of inadequate hygiene. Handcuffing plaintiff during showers was not *per se* cruel and unusual punishment. See LeMaire, 12 F.3d at 1457. Plaintiff's

claim arises from his inability to adequately clean himself. The complaint does not suggest that this alleged cause of the rash was ever communicated to prison officials. Therefore, plaintiff's claim for inadequate hygiene is dismissed.

B. Deliberate indifference to serious medical needs

In Count II of the amended complaint, Plaintiff has stated a claim for deliberate indifference to serious medical needs. "[D]eliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' . . . proscribed by the Eighth Amendment." Estelle v. Gamble, 429 U.S. 97, 104 (1976).

Plaintiff has sufficiently alleged that he suffered from a serious medical need. A medical need is serious, in satisfaction of the Estelle test, if it is one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention. Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987). Moreover, in Estelle, the Supreme Court recognized that even in less serious cases, where the prisoner does not experience severe torment or a lingering death, the infliction of unnecessary suffering is inconsistent with standards of decency. Atkinson v. Taylor, 316 F.3d 257, 266 (3d Cir. 2003).

Here, plaintiff has alleged a painful injury that would have been so obvious that a lay person would easily recognize the necessity for a doctor's attention. Plaintiff's amended complaint asserts that the swollen and inflamed rash covered a large portion of his body, including his back, buttocks, wrist and legs. In addition, plaintiff contends that the rash was so obvious that the nurse who eventually examined him did so from ten feet way. Such a widely-spread and painful condition constitutes a serious medical need.

Plaintiff has sufficiently alleged deliberate indifference on the part of defendants Guarini and Cane. Where prison authorities unduly delay or deny reasonable requests for medical treatment resulting in unnecessary and wanton infliction of pain or the threat of tangible residual injury constitutes deliberate indifference. See Monmouth County, 834 F.2d at 347; see also Natale v. Camden County Correctional Facility, 318 F.3d 575, 582 (3d Cir. 2003) (noting that deliberate indifference exists where necessary medical treatment is delayed for non-medical reasons). Moreover, needless suffering resulting from a denial of simple medical care, which does not serve any penological purpose, is inconsistent with contemporary standards of decency and thus violates the Eighth Amendment. Atkinson, 316 F.3d at 266.

In the present case, plaintiff alleges that he submitted five or six official requests over a two-and-a-half-week period for nursing assistance. Additionally, plaintiff contends that he wrote to Warden Guarini to request medical treatment and made oral requests that the guards, including Officer Cane, allow him to visit the infirmary.[6] The large number of requests plaintiff issued over the course of two and a half weeks should have conveyed a sense of urgency to defendants that plaintiff was in pain and needed medical treatment.

Defendants contend that a two-and-a-half-week delay in examination is a "de minimis"

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[6] The amended complaint does not allege that defendant Klinovski knew of plaintiff's serious medical need or had any personal involvement in the matter. Because deliberate indifference cannot be imputed through *respondeat superior*, the claim against Klinovski will be dismissed. See Atkinson, 316 F.3d 257, 270, quoting Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir.1988) ("A defendant in a civil rights action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of *respondeat superior*. . . . Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. . . .").

In addition, defendants' motion asks me to dismiss Count II as to the unidentified nurse, Jane Doe. Count II, however, asserts no claims against Nurse Doe.

amount of time for one to wait to have a skin condition examined, noting that "[o]utside of prison, patients are often required to wait a couple of weeks before getting an appointment with a busy physician, for dermatological complaint." Aside from the troubling nature of defendants' cavalier observation, plaintiff's complaint does not allege a simple case of teenage acne. Rather, plaintiff describes a painful dermatological condition spread over a large portion of his body, symptoms that most likely would cause a non-prisoner to proceed directly to an emergency room for treatment. See Estelle, 429 U.S. at 103 ("An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met."). Although society does not expect that prisoners will have unqualified access to healthcare, plaintiff has alleged a sufficiently serious medical need such that ignoring it for two and a half weeks constitutes deliberate indifference. See Hudson v. McMillian, 503 U.S. 1, 9 (1992).

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ORDER

AND NOW, this day of March, 2003, after considering the defendants' motion to dismiss, and the plaintiff's response thereto, and for the reasons set forth in the accompanying memorandum, it is ORDERED that:

1) the motion is GRANTED as to Count I and Count I is DISMISSED;

2) the motion is GRANTED as to the claim against defendant Klinovski in Count II and that claim is DISMISSED; and

3) the motion is DENIED as to the claims against all other defendants in Count II.

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THOMAS N. O'NEILL, JR., J.